

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
EASTERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

RANDY CONSTANT,

Defendant.

No. 18-CR-2034-CJW-MAR

ORDER

The matter before the Court is defendant's Motion to Dismiss, filed on August 30, 2019. (Doc. 41). Counsel for defendant requests this Court vacate defendant's conviction and dismiss the Information due to defendant's death prior to the expiration of defendant's time to appeal. (*Id.*). The government does not resist the motion. (Doc. 42). This motion is **granted**.

On December 20, 2018, defendant pled guilty to one count of wire fraud. (Doc. 10). On August 16, 2019, this Court sentenced defendant to 122 months imprisonment. (Doc. 38). On August 19, 2019, this Court entered judgment against defendant. (Doc. 39). That same day, defendant died. (Doc. 41-1).¹

A criminal defendant may appeal their conviction by filing a notice with the district court within 14 days of entry of the judgment. *See* FED. R. APP. P. 4(b)(1)(A). A defendant's death prior to the expiration of their time to appeal a conviction results in abatement of both the appeal and "all the proceedings had in the prosecution from its inception." *Crooker v. United States*, 325 F.2d 318, 320 (8th Cir. 1963). In such cases,

¹ It is uncertain whether judgment was entered before or after defendant's death. This fact is immaterial to the Court's analysis.

the defendant's conviction is vacated, and the charging instrument is dismissed as to the defendant. *E.g.*, *United States v. Bennett*, 765 F.3d 887, 892 (8th Cir. 2014).

Defendant, here, had until September 3, 2019, to file a notice of appeal.² Defendant's death before this date, therefore, entitles defendant to the relief discussed above. *See Crooker*, 325 F.2d at 320.

IT IS ORDERED defendant's conviction is vacated and the Information is **dismissed** as to this defendant.

IT IS ORDERED the clerk's office shall return all funds paid by defendant in relation to these proceedings to defendant's surviving spouse, Pamela Constant.³

IT IS SO ORDERED this 3rd day of October, 2019.



C.J. Williams
United States District Judge
Northern District of Iowa

² This date is 14 days after the Court's entry of the judgment on August 19, 2019, plus one additional day to extend the filing period past Labor Day. *See* FED. R. APP. P. 26(a)(1)(C).

³ Court records indicate, and defendant's counsel agrees, that the funds paid by defendant to the Court total \$657.90. This sum includes \$557.90 paid by defendant as credit against restitution as well as a \$100 special assessment. (Doc. 44).